**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held September 17, 2015 |
| Commissioners Present:Gladys M. Brown, ChairmanJohn F. Coleman, Jr., Vice ChairmanJames H. CawleyPamela A. WitmerRobert F. Powelson |  |
| Pennsylvania Public Utility Commission Office of Consumer Advocate Office of Small Business Advocate v.Columbia Gas of Pennsylvania, Inc. | R-2015-2469665C-2015-2474515C-2015-2475969 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Partial Settlement (Joint Petition or Partial Settlement) filed on June 24, 2015, by the Commission’s Bureau of Investigation and Enforcement (I&E); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA) and Columbia Gas of Pennsylvania, Inc. (Columbia or the Company) (collectively, the Joint Petitioners).[[1]](#footnote-1)

Also before the Commission for consideration and disposition are the Exceptions of the NGS Parties filed on August 17, 2015, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Mark A. Hoyer, which was issued on August 7, 2015, in the above-captioned proceeding. Replies to Exceptions were filed by I&E, the OCA, the OSBA and Columbia on August 24, 2015.

For the reasons stated, *infra,* we shall adopt the Recommended Decision to the extent consistent with this Opinion and Order, and grant the Joint Petition. Additionally, the Complaints of the OCA and the OSBA are deemed satisfied, and we shall grant, in part, the Exceptions of the NGS Parties.

# Background

Columbia’s filing in this case was made pursuant to Section 1307 of the Public Utility Code (Code), 66 Pa. C.S. § 1307. This is an annual filing that all large natural gas distribution companies (NGDCs) make and provides for the Company’s annual adjustment and reconciliation of its natural gas cost recovery rates. More specifically, Section 1307(f) governs recovery of natural gas costs and allows NGDCs with gross intrastate annual operating revenues in excess of $40,000,000 to file tariffs reflecting actual and projected increases or decreases in their natural gas costs, with the tariffs being effective six months from the date of filing. 66 Pa. C.S. § 1307(f)(1). Columbia’s filing anticipated a decrease of $0.10902 per therm to a purchased gas cost (PGC) rate of $0.39841 per therm for service rendered on and after October 1, 2015, assuming no further changes to the currently effective PGC rate of $0.50743 per therm. R.D. at 1.

# History of the Proceeding

On February 27, 2015, Columbia submitted its pre-filing information in support of its annual PGC filing to the Commission pursuant to 52 Pa. Code §§ 53.64 and 53.65.

On March 31, 2015, Columbia filed a letter with the Commission stating that, for the quarterly period commencing April 1, 2015, the Company’s recalculated PGC rate will decrease $0.03148 per therm. 52 Pa. Code §53.64(i)(5)(iii). On April 1, 2015, Columbia filed Supplement No. 230 to Tariff Gas – Pa. PUC No. 9 (Supplement No. 230) with a proposed effective date of October 1, 2015.

On or about March 11, 2015, the OSBA filed a Formal Complaint at Docket No. C-2015-2475969. On or about March 12, 2015, I&E filed a notice of appearance. On March 27, 2015, the NGS Parties filed a Petition to Intervene. On March 30, 2015, the OCA filed a Formal Complaint at Docket No. C-2015-2474515. Also on March 30, 2015, CII filed a Petition to Intervene.[[2]](#footnote-2)

On April 8, 2015, a Prehearing Order was issued memorializing the matters decided and agreed upon by the Parties attending the prehearing conference, granting the Petitions to Intervene filed by CII and the NGS Parties, and consolidating the formal Complaints filed by the OSBA and the OCA with this Section 1307(f) rate proceeding.

On June 3, 2015, a technical evidentiary hearing was held. Prior to the hearing, counsel for Columbia informed the ALJ that a partial settlement had been achieved and that the Parties intended to stipulate to the admissibility of the pre-served testimony and exhibits and waive cross-examination. At the hearing, the Parties pre-served testimony and exhibits were admitted into the record.

On June 16, 2015, Main Briefs were filed by Columbia, I&E, the OCA, the OSBA and the NGS Parties. On June 24, 2015, Reply Briefs were filed by Columbia, I&E, the OCA, and the NGS Parties. Also on June 24, 2015, the Joint Petition was filed by the Joint Petitioners. The Joint Petitioners’ Statements in Support of the Partial Settlement were attached to the Joint Petition as appendices. The non-signatory parties, CII and the NGS Parties, did not oppose the Joint Petition.

In the Joint Petition, Columbia has calculated that the effect of the settlement term, which recalculates the Unified Sharing Mechanism (USM) credit amount, will reduce PGC rates by $0.00053 per therm. The currently effective PGC rate is $0.46790 per therm, which became effective July 1, 2015.

On July 24, 2015, the ALJ issued an order closing the hearing record. In a Recommended Decision issued on August 7, 2015, ALJ Hoyer recommended approval of the Joint Petition without modification, adoption of the USM proposal of I&E and rejection of the NGS Parties’ proposal to require Columbia to undertake a study of the use of purchased gas cost assets. R.D. at 18-20, 65-68 and 83.

As noted, Exceptions were filed by the NGS Parties on August 17, 2015. Replies to Exceptions were filed by Columbia, I&E, the OCA and the OSBA on August 24, 2015.

# Introduction

As a preliminary matter, we note that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In his Recommended Decision, the ALJ made twenty Findings of Fact and reached twenty-one Conclusions of Law. R.D. at 3-8, 83-86. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by the Opinion and Order.

1. **Burden of Proof**

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies,* 364 Pa. 45. 70 A.2d 857 (1950). In this instance, the Company has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking.

While Columbia has the burden of proof with regard to the rates and modifications included in its filings, there are two contested issues raised by the NGS Parties that have not been included in the Company’s filings or as part of the Joint Petition. Therefore, we concur with the ALJ that a party that offers a proposal not included in the original filings bears the burden of proof for such proposal. R.D. at 61 (citing *Pa. P.U.C. v. Metropolitan Edison Co.*, Docket No. R-00061366 (Order entered January 11, 2007) (*Met-Ed*) and *Pa P.U.C. v. Philadelphia Gas Works,* Docket Nos. R‑00061931 (Order entered September 28, 2007).

1. **Least Cost Fuel Procurement Policy**

As discussed, *supra*, Section 1307(f) of the Code governs recovery of natural gas costs and allows natural gas distribution companies with gross intrastate annual operating revenues in excess of $40,000,000 to file tariffs reflecting actual and projected increases or decreases in their natural gas costs, with the tariffs being effective six months from the date of filing. 66 Pa. C.S. § 1307(f)(1). Section 1307 further provides that the Commission, after a hearing, shall determine the portion of the Company’s natural gas distribution costs in the previous twelve-month period that meet the standards set out in Section 1318 of the Code. 66 Pa. C.S. § 1307(f)(5). Section 1318 provides that no rates for a natural gas distribution utility shall be deemed just and reasonable unless the Commission finds that the utility is pursuing a least cost fuel procurement policy, consistent with the utility’s obligation to provide safe, adequate and reliable service to its customers. 66 Pa. C.S. § 1308(a).

In determining whether Columbia is pursuing a least cost fuel procurement policy under Section 1318 of the Code, specific findings must be made as follows:

(1) The utility has fully and vigorously represented its ratepayers’ interests before the Federal Energy Regulatory Commission.

(2) The utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility’s ratepayers.

(3) The utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies.

(4) The utility has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.

66 Pa. C.S. § 1318(a)(1)-(4).

Columbia purchases various transportation and storage services from an affiliate, Columbia Transmission, and, therefore, with respect to purchases from affiliates, the Commission is required to make the following specific findings:

(1) That the utility has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests.

(2) That each contract for the purchase of gas from an affiliated interest is consistent with a least cost fuel procurement policy.

(3) That neither the utility nor its affiliated interest has withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.

66 Pa. C.S. § 1318(b)(1)-(3).

Section 1317 of the Code, 66 Pa. C.S. § 1317, requires the submission of certain information to enable the Commission to make a least cost fuel procurement finding. The Commission has promulgated regulations pursuant to the statutes that include extensive filing requirements that also govern such filings. *See*, 52 Pa. Code §§ 53.64 (filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of $40 million) and 53.65 (special provisions relating to natural gas distributors with gross intrastate annual operating revenues in excess of $40 million with affiliated interests). The ALJ concluded that Columbia complied with these requirements. R.D. at 83-85.

1. **Settlements**

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Regulatory proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

In this case, the Joint Petitioners have reached an accord on many of the issues and claims that arose in this proceeding and submitted the Partial Settlement. The Joint Petitioners have the burden to prove that the Partial Settlement is in the public interest.

# The Joint Petition for Partial Settlement

1. **Least Cost Fuel Procurement Policy**

As discussed, *supra*, in determining whether Columbia is pursuing a least cost fuel procurement policy, the Commission must make specific findings set forth in Sections 1318(a) and (b) of the Code. The Joint Petitioners requested that the Commission make specific findings of fact in that regard that are set forth in Paragraphs 12 through 31 of the Joint Petition and which the ALJ has adopted and included in the Recommended Decision as Findings of Fact Nos. 1 through 20. Joint Petition at 4-11, R.D. at 3-8. In addition, the Joint Petitioners request that the Commission find, based on the evidence presented by the Parties, that: (1) Columbia’s gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended January 31, 2015; and (2) Columbia’s purchasing policies during the twelve-month period beginning October 1, 2015 (the period of time the proposed rates would be in effect), meet the standards set forth in Sections 1318(a) and (b). Joint Petition at 12-14. The ALJ found that Columbia is pursuing a least-cost fuel procurement policy pursuant to Section 1318 in his Conclusions of Law Nos. 2 through 10. R.D. at 83-85. Notwithstanding our disposition of the two outstanding issues in this proceeding, *infra*, based on our review of the record and the terms of the Joint Petition, *infra*, we find that Columbia has met the terms of Section 1318 of the Code.

1. **Terms and Conditions of the Partial Settlement**

The Joint Petitioners agreed to the Partial Settlement covering all issues except for two. The remaining Parties to this proceeding, CII and the NGS Parties, did not oppose the Partial Settlement. In the Partial Settlement, the Joint Petitioners reached agreement on the findings required pursuant to 66 Pa.C.S. §1307(f) and 66 Pa.C.S. §1318 of the Code. The Joint Petitioners also agreed on the projection of the customer share of USM net proceeds.

The Parties to this proceeding reserved for litigation the following issues: (1) the allocation of the customer share of USM net proceeds between the Purchased Gas Demand Cost (PGDC) and the Purchased Gas Commodity Cost (PGCC) rates and; (2) the NGS Parties’ proposal that Columbia conduct a study regarding how Columbia’s retained pipeline capacity is utilized.

The Partial Settlement consists of the Joint Petition containing the terms and conditions of the Partial Settlement and Appendices A through D representing the Statements in Support filed by Columbia, I&E, the OCA and the OSBA, respectively.

The essential terms of the Partial Settlement are set forth in ¶ 33. The Joint Petitioners agreed to the following terms and conditions:

1. **Projection of Customer Share of USM Net Proceeds**

33. The Company will continue to calculate the Unified Sharing Mechanism’s (“USM”) projection of the customer’s share based upon an average of the three most recently completed PGC periods for which data are available at the time of the PGC prefiling. It is further agreed that for the twelve months ended September 30, 2014, the USM net proceeds shall be deemed to be $7.5 million, and this amount shall be included in the three-year average for purposes of this proceeding and the 2016 and 2017 PGC proceedings.

 In addition to the specific terms to which the Joint Petitioners have agreed, the Partial Settlement contains certain general, miscellaneous terms. The Partial Settlement is conditioned upon the Commission’s approval of the terms and conditions without modification. The Partial Settlement establishes the procedure by which any of the Joint Petitioners may withdraw from the Partial Settlement and proceed to litigate this case, if the Commission should act to modify the Partial Settlement. Partial Settlement ¶ 42 at 14. In addition, the Partial Settlement provides that it is made without any admission against, or prejudice to, any position which any of the Joint Petitioners might adopt during subsequent litigation of this case or any other case. Partial Settlement ¶ 43 at 15.

 The Joint Petitioners respectfully requested that the ALJ and the Commission approve the Partial Settlement, including all terms and conditions thereof, subject to the resolution of the two issues reserved for briefing. Partial Settlement at 15.

1. **ALJ’s Recommendation**

The ALJ found that the proposed Partial Settlement is in the public interest because the resultant rates are just and reasonable and comply with the requirements of the Code for PGC proceedings. According to the ALJ, the record supports the proposed findings of fact agreed to by the Joint Petitioners in the Partial Settlement. Further, the ALJ stated that resolution of all issues in this case by Partial Settlement, while reserving for litigation only those two issues that were not resolved by agreement among the parties, minimizes the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense, which is ultimately passed on to ratepayers, while still securing for ratepayers a settlement of all other issues that is in the public interest. R.D. at 18.

The ALJ explained that in this Partial Settlement, the Joint Petitioners have agreed to use a proxy of $7.5 million in lieu of the experienced $11.9 million for the twelve months ended September 30, 2014, and agreed that this amount would be included in the three-year average to be used to calculate the projected USM credit for this proceeding as well as the 2016 and 2017 PGC proceedings. Although the OCA supported the use of the $11.9 million figure in the calculation, the ALJ concluded that the Joint Petitioners have achieved a reasonable compromise in agreeing to use a proxy of $7.5 million and found this compromise to be in the public interest. As such, the ALJ was satisfied that the Joint Petitioners have eliminated the distorting effect of the extraordinary experienced credit of $11.9 million from future calculations. In light of the above, the concluded that the Joint Petition is in the public interest and thus recommended that the Joint Petition be granted without modification. R.D. at 20.

1. **Disposition**

The Partial Settlement in principle of the majority of issues was reached prior to the evidentiary hearing. At the hearing, the Parties pre-served testimony and exhibits were admitted into the record and cross-examination was waived. The Partial Settlement was not signed by all the Parties, but also was unopposed by any Party.

Based upon our review of the Partial Settlement, we agree with the ALJ, as well as the filed Statements in Support, that the terms and conditions of the proposed settlement are in the public interest and should be approved. We find that the adoption of the compromise of $7.5 million of USM net proceeds for the twelve months ended September 30, 2014, is reasonable and supports a finding that the Stipulation is in the public interest. The Stipulation resolves the majority of the issues impacting residential consumers, business customers and the public interest at large and represents a fair balance of the interests of Columbia and its customers. The benefits of approving the Partial Settlement Stipulation are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. For the reasons stated herein and in the settling Parties’ Statements in Support, we agree with the ALJ’s conclusion that the Joint Petition is in the public interest. Accordingly, we shall adopt the ALJ’s recommendation to approve the Partial Settlement, without modification.

# Contested Issues

1. **Unified Sharing Mechanism**
2. **Background**

The USM is a method for distributing the net proceeds that Columbia earns from transactions involving excess supply and/ or capacity. Excess supply and/or capacity can result when the actual requirements of firm service customers on any day are less than the supply and/or capacity that Columbia has obtained to meet the expected demand of firm service customers. Under the USM, seventy-five percent of the proceeds are credited to customers and Columbia is permitted to retain twenty-five percent. *See Pa. P.U.C., et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2009-2093219 (Order entered September 30, 2009). Sharing mechanisms such as the USM were approved by the Commission to encourage natural gas distribution companies to seek out those transactions that maximize net margins, while maintaining safe and adequate service. The seventy-five percent that is credited to customers is further split between the PGCC and the PGDC. Both CHOICE[[3]](#footnote-3) and PGC sales customers receive the PGDC credit because both groups pay the PGDC charge while only PGC sales customers pay the PGCC charge. Therefore, only PGC sales customers receive the PGCC credit. Columbia’s current Commission-approved tariff provides for a credit of sixty percent of the customer share of total USM revenues to the PGCC and forty percent to the PGDC. Columbia M.B. at 6-7.

 Columbia engages in five types of transactions to produce net proceeds that are shared through the USM: (1) capacity release, (2) options, (3) exchanges, (4) off system sales, and (5) asset management agreements (AMAs). According to Columbia, the market determines the value of each transaction at any point in time. Columbia M.B. at 7.

Capacity release is a transaction completed under Federal Energy Regulatory Commission (FERC) regulations and interstate pipeline tariffs that “releases” firm contract capacity rights to a third party shipper. Releases can be recallable or nonrecallable. Under FERC rules, Columbia identifies potential buyers of such capacity, negotiates the release price and completes the transaction utilizing the pipeline’s electronic bulletin board. An Options agreement or sale is an arrangement in which Columbia sells a counter party the right, but not the obligation, to sell natural gas to Columbia at a specific location at an agreed-to purchase price and agreed-to volume. An Exchange Agreement is an arrangement between Columbia and a counter party in which like volumes of natural gas, adjusted if needed for pipeline retention, are exchanged at specific agreed-to locations. Exchanges can occur during the same day or can span a defined time period. An off-system sale is an arrangement between Columbia and a buyer for the sale of natural gas at a specific location and at an agreed-to purchase price. An AMA is an arrangement in which Columbia releases specific capacity assets to a seller that provides a delivered natural gas service to Columbia to serve its customers. Columbia M.B. at 7.

In Columbia’s 2014 Section 1307(f) proceeding, the NGS Parties challenged the 60/40 percent allocation in the USM mechanism. Although the Commission Order in that proceeding did not direct any change to the mechanism, the Commission did direct Columbia to undertake a study of its allocation of net proceeds between the PGCC and PGDC. *Pa. P.U.C., et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2014-2408268 (Order entered September 18, 2014) (*Columbia 2014 1307(f) Order)*. The *Columbia 2014 1307(f) Order* directed Columbia to address six questions in its study: (1) Are transportation and storage assets equally allocated between CHOICE and PGC customers, taking into account base-load assignments of firm transportation given to and paid for by NGSs?; (2) Do both NGSs and PGC customers pay a roughly equal load-weighted share of total system storage and transportation costs, taking into account NGS-assigned capacity and balancing costs?; (3) Can Columbia definitely identify any off-system sales that do not involve the use of its transportation and storage assets?; (4) Under Columbia’s AMAs, are the underlying released transportation and storage assets paid for by CHOICE and PGC customers in proportion to their load?; (5) Under Columbia’s released capacity transactions, are the released transportation and storage assets paid for by CHOICE and PGC customers in proportion to their load?; and (6) Under Columbia’s off-system sales transactions, are the underlying transportation and storage assets paid for by CHOICE and PGC customers in proportion to their load? Columbia M.B. at 8.

In response to the Commission directive from the *Columbia 2014 1307(f) Order*, Columbia presented answers to these questions in Exhibit 16 of its pre-filing in the present case. In response to the first question, Columbia answered that its transportation and storage assets are, in fact, equally allocated between CHOICE and PGC customers from a total demand cost perspective. Columbia responded to the second question by explaining that total system storage and transportation costs are allocated between CHOICE and PGC customers based on total capacity cost and annual demand for CHOICE and PGC customers, and therefore are allocated in an equitable manner. The third question resulted in a finding that, while it is possible to structure various off system sales arrangements that do not use capacity assets, the vast majority of Columbia’s off system sales currently involve the use of Columbia’s transportation or storage assets. Columbia answered the final three questions in the affirmative. Columbia M.B. at 8-9.

1. **Positions of the Parties**

Columbia did not offer any new proposal for allocating the customer share of net proceeds between the PGCC and the PGDC. However, Columbia did recognize that if CHOICE participation increased, the use of fixed allocation percentages between the PGDC and PGCC would increase the per therm PGCC credit. (Columbia St. No. 1‑R, at 2, 7). To address this situation, Columbia offered an alternative USM calculation which would base the allocation to the PGDC on two factors: (1) the percentage of capacity release to total off system sales and capacity release based on a four-year average; and (2) the current CHOICE participation rate applied to the percentage of revenues derived from sales, options, AMAs, and exchanges based on a four-year average. Following the calculation of the PGDC percentage, the remainder of the customer share of net margins would be allocated to the PGCC. (Columbia St. No. 2 at 28); Columbia M.B. at 10.

According to Columbia, under this alternative calculation, the share of USM credits allocated to the PGDC revenue would change in direct relation to CHOICE participation levels. Under this alternative calculation, at a 100 percent CHOICE participation rate, 100 percent of the customers’ share of USM credits would be credited to the PGDC. Columbia did not take a position with regard to the other Parties’ proposals to revise the allocation of USM net proceeds between the PGDC and the PGCC. (Columbia St. No. 2 at 28-29); Columbia M.B. at 10-11.

I&E recommended that the current allocation of the USM credits between the PGCC and the PGDC be modified to reflect the Company’s proposed alternative calculation presented in Exhibit No. 16, with one modification: the percentage of capacity release to total off system sales and capacity release should be based on the average of the three most recently completed PGC periods for which data are available at the time of the 1307(f) proceeding, as should the percentage of revenue derived from Sales, Options, AMA and Exchanges. I&E reiterated Columbia’s reasoning in its Exhibit 16 that, considering the blended nature of the resources utilized for off system sales other than Capacity Release, the allocation procedure could be modified such that the percentage of revenues allocated to the PGDC could be based on two factors. The first, as stated by Columbia, being the percentage of capacity release to total off system sales and capacity release based on a three-year average. The second factor, as stated by Columbia, would be calculated based on the current CHOICE participation rate applied to the percentage of revenues derived from Sales, Options, AMA and Exchanges based on a three-year average. And finally, as also stated by Columbia, the revenues allocated to the PGCC would be the remainder following the calculation of the PGDC percentage. I&E M.B. at 12-13.

I&E recommended the use of a three-year average, instead of the four-year average proposed by Columbia, asserting that the three-year average is similar to the way that Columbia now determines the retainage rate applied in each calendar year, and, as a result of the partial settlement reached in last year’s proceeding at Docket No. R‑2014‑2408268, is similar to the way the Parties agreed to calculate the projected level of USM revenues to be shared with customers. I&E M.B. at 13.

I&E stated that the basis for its recommendation is that Columbia’s Unified Incentive Program is comprised of off-system sales (Sales, Options, AMA, and Exchanges) and capacity release. According to I&E, capacity release is the only product that uses only capacity in the determination of its value, and since capacity is paid for by both PGC and CHOICE customers, both groups of customers should benefit from this product through a credit to the PGDC. I&E notes that the remaining products (Sales, Options, AMA and Exchanges) utilize capacity and natural gas supply. I&E explained that application of its recommended methodology would allocate a portion of the value of non-capacity release revenue to the CHOICE customers commensurate with levels of CHOICE participation. I&E M.B. at 13-14.

I&E does not support the proposed modification to the USM submitted in this proceeding by the NGS Parties. In fact, I&E argues against adoption of the NGS Parties proposed modification as this would have the net effect of eliminating any portion of the USM being credited to customers on a commodity basis notwithstanding the fact that a portion of the USM revenues being shared are commodity related. I&E M.B. at 15-17.

The OCA supported the current method as proposed by Columbia in its filing of returning these credits to customers with an allocation of sixty percent to the PGCC for the commodity cost of natural gas, and forty percent allocated to the PGDC for the demand costs. The OCA stated that this existing 60/40 percent split has been in place since 2008 and there is no compelling reason on the record to modify the split. According to the OCA, the information Columbia provided in response to the Commission directive in its 2014 PGC proceeding confirms that the 60/40 percent split adequately reflects the contributions made to both capacity release and off-system sales that are made by PGC and CHOICE customers. OCA M.B. at 3- 4.

The OCA noted that the proposals by I&E and the OSBA support a mechanism that takes shopping into consideration. The OCA agrees that shopping should be a factor, but disagrees that a change in the current structure or a complex formula is needed at this time. The OCA submitted that the current 60/40 percent allocation recognizes the contribution of both natural gas supply, paid for by PGC customers, and capacity assets, paid for by both CHOICE and PGC customers, when returning the credits from off-system sales transactions to customers. According to the OCA, the current 60/40 percent allocation addresses this complicated issue in a reasonable manner. OCA M.B. at 6-7, 12.

The OSBA stated that the issue of how to allocate the ratepayer portion of the credits from Columbia’s USM is a matter best served by a reasonable compromise, rather than by taking an extreme position. The OSBA asserted that the positions taken by I&E, the Company and itself all attempt to reflect (a) the fact that these margins are related to both the availability of capacity assets and the gas purchase activities of the Company, (b) the technical problems associated with the existing mechanism, and (c) the spirit of the settlement of the 2008 Section 1307(f) proceeding in the results. According to the OSBA, its proposal in this proceeding avoids the need for the Commission to adjudicate whether the Company’s mix of capacity release, off-system sales and AMA transactions is appropriate, and reflects the changes in shopping rates that have occurred since the 2008 settlement was entered into. The OSBA opined that the proposals offered by the Company and I&E are not outside the range of reasonableness. However, the OSBA claimed that the extreme positions have generally been adopted by the NGS Parties and the OCA. OSBA M.B. at 5.

The OSBA opined that the essence of this issue boils down to two inter-related questions, both raised by Parties in last year’s Section 1307(f). The OSBA stated that the first question is conceptual: Is the Company’s ability to earn USM credits related to (a) the availability of unused capacity which it must retain in order to meet the load balancing needs of both sales and CHOICE customers, (b) the knowledge and skills acquired by the Company in actively procuring gas for PGC sales customers, or (c) both? According to the OSBA, not surprisingly, both factors contribute to the Company’s ability to earn these margins. Moreover, the OSBA asserted that because these factors are inter-related, there is no obviously correct mechanism for allocating the credits between the PGCC and the PGDC. OSBA M.B. at 7-8.

According to the OSBA, the second question, raised by the NGS Parties in last year’s Section 1307(f) proceeding, is technical: Does the existing sharing mechanism reasonably recognize the implications of changes in the overall shopping rate? The OSBA contended that the existing mechanism has a technical flaw, in that the share of credits going to the PGDC does not increase as shopping levels increase. The OSBA opined that at high levels of shopping, the existing mechanism will produce unreasonably high credits to PGC sales customers, which will provide an unreasonable competitive disadvantage to competitive NGSs. For example, the OSBA explained that at a shopping rate of eighty percent, the existing mechanism would produce a PGCC credit of 35.6 cents per Dth, compared to a 4.7 cent per Dth PGDC credit. The OSBA opined that it would be most difficult for NGSs to effectively compete with such a competitive disadvantage. OSBA M.B. at 8.

In this proceeding, the OSBA averred that the extreme positions have generally been adopted by the NGS Parties and the OCA. The OSBA opposed the NGS Parties’ proposal in this proceeding. According to the OSBA, the NGS Parties take the position that all of the USM credits should be assigned to the PGDC. According to the OSBA, the NGS Parties concluded that none of the USM credits are in any way related to activities undertaken by Columbia solely on behalf of sales customers. The OSBA opined that this proposal fails to recognize all of the inter-related effects which allow Columbia to earn the margins. The OSBA acknowledged that while it is true that all or virtually all of the transactions in the USM make use of capacity assets which are generally paid for by both sales and CHOICE customers, it must also be recognized that Columbia is able to earn these margins as a result of its activities on behalf of PGC sales customers because it is active in the natural gas markets, and that as shopping increases, the absolute level of the margins is likely to decline. As such, the OSBA opined that the NGS Parties’ proposal is one-sided and unduly self-serving. OSBA M.B. at 8-9.

The OSBA pointed out that the OCA, on the other hand, takes the position that there is nothing wrong with the existing sharing mechanism, except that maybe it should be modified to reduce the share of credits assigned to the PGDC to twenty percent from forty percent. The OSBA noted however that the OCA did not acknowledge that the PGCC credit will increase as shopping increases, effectively serving as a damper on competition. According to the OSBA, any mechanism which increases the credit to sales customers as shopping levels increase, as the current mechanism does, will obviously not be beneficial to competition. OSBA M.B. at 9.

 The OSBA pointed out that its witness, I&E and the Company adopted conceptually similar positions in that they recognized that some sharing of the credits between the PGCC and the PGDC is reasonable to reflect the dual nature of causation, but that the existing mechanism has a technical flaw which needs be corrected. The OSBA explained that these three Parties all recommended that the current fixed percentage mechanism be modified to an adjustable mechanism, in which there is both a fixed component of the credit assigned to the PGDC, and a variable component which moves with the level of customer shopping. The OSBA noted that this fixed component represents the credits that are assigned to all customers, regardless of the level of shopping. According to the OSBA, as shown in its surrebuttal testimony, this fixed component would be 19.1 percent under the Company’s proposal, 19.0 percent under I&E’s proposal, and 30.0 percent under its proposal. The OSBA explained that there would then be a sliding scale for the remaining, larger portion of the share, based upon the levels of shopping, representing those costs that are incurred only by shopping customers. OSBA M.B. at 9-10.

 According to the OSBA, the differences between the Company, the I&E and the OSBA positions related solely to how the “fixed” component of the allocation mechanism would be defined. The OSBA stated that the I&E and Company methods would set the “fixed” portion of the allocation mechanism on the basis of the share of USM credits that are related to capacity release activities. The OSBA explained that its proposal is that the “fixed” portion of the allocation mechanism be set based on judgment, in order to avoid the possibility of skewing incentives for the Company to engage in one form of off-system transaction at the expense of another. Nevertheless, the OSBA opined that the proposals offered by the Company and I&E are not outside the range of reasonableness. OSBA M.B. at 10-11.

The NGS Parties took the position that the capacity assets, the costs of which are recovered through the PGDC, are the critical asset for each of the five types of transactions Columbia uses to generate USM Revenue, without which USM Revenue would not be possible. According to the NGS Parties, the evidence proves that all customers, CHOICE and PGC customers, pay for the capacity assets on an equivalent basis. The NGS Parties further state that the evidence also shows that it would be inappropriate to assume that any revenue is generated by assets paid for as part of the PGCC. The NGS Parties assert that these facts lead to the inescapable conclusion that the current USM allocation methodology which allocates sixty percent of the USM revenue to only default service customers and forty percent of the USM revenue to all customers, through the PGDC, is arbitrary, unreasonable, and discriminatory. NGS Parties M.B. at 5-6.

The NGS Parties argued that the USM is arbitrary because the allocation percentages do not reflect the facts, particularly the fact that the only necessary assets for all of the transactions described by Columbia are the capacity assets, not PGC gas. The NGS Parties assert that the USM is unreasonable, because the discrepancy in the level of USM revenue credited, as between default service and CHOICE customers, is over 300%. Finally, the NGS Parties assert that the USM is discriminatory because it imposes upon CHOICE customers a subsidy to default service customers, to the tune of about $16 per customer, per year. According to the NGS Parties, this scheme runs contrary to Section 1304 of the Public Utility Code, 66 Pa.C.S. § 1304, which prohibits the granting of an unreasonable advantage to one class to the disadvantage of another. The NGS Parties further contended that it also runs counter to Section 2203(4) which requires that Natural Gas Distribution Companies “shall provide distribution service to all retail gas customers . . . on non-discriminatory rates, terms of access and other conditions.” 66 Pa.C.S. § 2203(4). According to the NGS Parties, the current USM fails on both counts and must be modified to be equitable in the only way possible – allocating 100 percent of USM revenue to the PGDC so there is no disadvantage to any group. NGS Parties M.B. at 6.

The NGS Parties reiterated that Columbia generates revenues shared under the USM in five types of transactions, all of which require Columbia’s retained pipeline and storage assets. The NGS Parties stated that the five USM transactions include: capacity releases, AMAs, off-system sales, exchange agreements and options agreements. While some of the transactions involve the sale of gas to generate revenue, the NGS Parties believe this is not a meaningful distinction for distribution of USM revenues because it has not been shown that the revenue generated is attributable to the sale of the commodity related to retail consumers. The NGS Parties assert that capacity releases do not involve the sale of gas, and, while the other transactions may involve the sale of gas, none of the revenues generated are attributable to the sale of the commodity for default service customers. NGS Parties M.B. at 7.

According to the NGS Parties, it is obvious that none of these transaction types depends upon the use of PGC gas. Accordingly, the NGS Parties contended there is no basis upon which to conclude that allocating any USM revenue to the PGCC is reasonable, let alone, sixty percent. They claimed it is obvious that each of these transactions depends entirely upon the use of the capacity assets. Similarly, therefore, the NGS Parties claimed it is irrational and arbitrary not to allocate all USM revenue to the PGDC. The NGS Parties opined that, even ignoring the anti-competitive subsidy that is imposed by the current USM method, the simple facts of how the revenue is generated make clear that the current method is illegal and unwarranted. NGS Parties M.B. at 10‑11.

The NGS Parties noted it is also important to consider that NGSs deliver natural gas into the Columbia system every day of the year in 1/365th slices that over the course of the year add up to 100 percent of the annual usage for each CHOICE customer. The NGS Parties claimed that this gas, particularly in the summer months, is often injected into the storage assets that Columbia retains. According to the NGS Parties, when NGSs deliver gas into the system the gas is co-mingled with any gas that may be used to supply PGC customers. Thus, the NGS Parties opined that the gas Columbia uses to make wholesale transactions cannot be said to be solely PGC gas. The NGS Parties asserted that this is simply one more reason why any attempt to make a distinction between CHOICE gas and PGC gas that Columbia may use to make a wholesale transaction is simply arbitrary. According to the NGS Parties, the driving factor that allows Columbia to enter into wholesale transactions described in the USM Study is the fact that Columbia retains capacity assets. NGS Parties M.B. at 11-12.

The NGS Parties next asserted that the alternative USM sharing mechanisms presented by Columbia, the OSBA and I&E are not reasonable and should not be adopted. In the USM Study provided in this proceeding, the NGS Parties point out that Columbia presented a potential alternative USM sharing mechanism in which all capacity release revenues could be assigned to the PGDC, and the remaining USM revenue would be shared between the PGCC and PGDC based on the percentage of shopping. *See* Columbia Ex. No. 16. The NGS Parties noted that Columbia did not endorse this approach, but merely presented it as one potential alternative. According to the NGS Parties, both I&E and the OSBA advocated for a variant of the USM sharing mechanism presented by Columbia, in that both proposals would establish a fixed amount that is always assigned to the PGDC, and the remaining amount of the USM revenues are shared between the PGCC and PGDC based on the percentage of shopping. The NGS Parties argued that these so-called formulaic approaches, while well-intentioned, suffer from two major problems and thus should not be adopted. NGS Parties M.B. at 13.

First, according to the NGS Parties, neither proposal meaningfully alters the amount of revenue allocated to PGDC, so the inequity of the under-allocation of USM revenues to CHOICE customers would still remain. Second, the NGS Parties claimed that neither proposal actually remedies the problem they are attempting to correct as under both proposals, the level of USM revenue allocation would still vary based on the level of shopping. In fact, under the Company’s, I&E’s and the OSBA’s proposals, the NGS Parties explained that the revenue allocation methodology would actually have the potential to worsen as shopping decreased. The NGS Parties opined that the level of shopping has little to do with the disparity caused by the arbitrary USM Revenue allocation, and does not address the source of the problem, that CHOICE customers and PGC customers pay the same costs for the same assets that generate USM Revenue, whether there are five hundred CHOICE customers or five hundred thousand. NGS Parties M.B. at 13-14.

The NGS Parties concluded these formulaic approaches do not address the cause of the problem and have the potential to further exacerbate the problem over time. The NGS Parties argued that the only fix is to adjust the USM so that 100 percent of the USM Revenue is returned to customers through the PGDC, so shopping levels don’t matter, and no self-defeating and complex formula is required. NGS Parties M.B. at 15.

The NGS Parties opined that, as customers migrate to CHOICE, the USM has the effect of subsidizing the PGC price more and more. The NGS Parties claimed this serves as an artificial limitation on the amount of customers that would be willing to migrate. According to the NGS Parties, as shopping increases the credit would get so large that it would not make rational economic sense for customers to leave PGC service because of the substantial subsidy flowing to the PGC rate. NGS Parties M.B. at 17.

According to the NGS Parties, all of these problems led it to propose that the only long term solution that solves the USM issues is to allocate the entire amount of USM Revenue to the PGDC which is shared on a volumetric basis by all customers. The NGS Parties asserted that this addresses the fact that all customers pay equally for the assets that actually produce the revenue, it eliminates the subsidy currently provided by CHOICE customers to default service customers, and eliminates the need for a complex adjustment mechanism. They further asserted that no other witness has refuted Columbia’s Exhibit No. 16, and its conclusion that there is no reasonable means to segregate the types of revenue producing transactions from a PGCC versus a PGDC perspective. The NGS Parties opined that this means that the current methodology is clearly broken and discriminatory because it provides a USM credit to default service customers that is three times larger than that provided to CHOICE customers, with no reasonable or other basis for doing so. NGS Parties M.B. at 17.

1. **ALJ’s Recommendation**

In his Recommended Decision, the ALJ first concluded that the existing 60/40 percent split contained in Columbia’s filing and supported by the OCA in this proceeding is not reasonable in light of the USM study conducted by Columbia. The ALJ noted that while the OCA took the position that there was nothing wrong with the existing sharing mechanism; its testimony offered no position on the technical problems associated with the existing mechanism. The ALJ further noted that the OCA did not acknowledge that the PGCC credit will increase as shopping increases, effectively serving as a damper on competition. According to the ALJ, any mechanism which increases the credit to sales customers as shopping levels increase, as the current mechanism does, will obviously not be beneficial to competition. Accordingly, the ALJ concluded that the Company and the OCA have failed to meet their respective burdens of proof regarding the 60/40 percent USM that is currently in place. R.D. at 65.

The ALJ next concluded that the NGS Parties’ position that total USM credits be shared equally between Columbia’s gas sales customers and its CHOICE program customers through the PGDC mechanism alone is fundamentally flawed and ignores the fact that beyond capacity release transactions, all other transactions generating USM revenue involve the sale of natural gas supply which is paid for only by PGC customers. The ALJ explained that in effect, the NGS Parties concluded that none of the USM credits are in any way related to activities undertaken by Columbia solely on behalf of sales customers. According to the ALJ, this proposal fails to recognize all of the inter-related effects which allow Columbia to earn the margins as virtually all of the transactions in the USM make use of capacity assets which are generally paid for by both sales and CHOICE customers. However, the ALJ further stated that it must also be recognized that Columbia is able to earn these margins as a result of its activities on behalf of PGC sales customers because it is active in the natural gas markets, and that as shopping increases, the absolute level of the margins is likely to decline. R.D. at 65-66.

The ALJ next concluded that the proposal for sharing net proceeds associated with off-system sales and capacity releases made by I&E, which closely models the alternate proposal described by Columbia, is the most fair and reasonable proposal in this proceeding. The ALJ concluded the I&E proposal is better than the model proposed by the OSBA, because it is so similar to the Company’s suggested alternative, the only difference being the number of years used for the average. The ALJ noted that the Company’s alternative proposed using a four-year average and I&E proposed using a three-year average. According to the ALJ, I&E’s explanation for using a three-year average, that it is similar to the way that Columbia now determines the retainage rate applied in each calendar year, and, as a result of the partial settlement reached in last year’s proceeding at Docket No. R-2014-2408268, is similar to the way the Parties agreed to calculate the projected level of USM revenues to be shared with customers, makes practical sense. The ALJ noted that neither Columbia nor the OSBA opposed the allocation method proposed by I&E. R.D. at 66.

The ALJ found that I&E’s proposal would allocate a portion of the value of non-capacity release revenue to the CHOICE customers commensurate with levels of CHOICE participation. As such, the ALJ explained that if CHOICE participation reached 100 percent, then 100 percent of the customers’ share of the CR and OSS would be credited to the PGDC. The ALJ found this to be fair and reasonable and thus recommended that the Commission adopt I&E’s proposal on this matter. R.D. at 66-67.

Lastly, the ALJ supported Columbia’s opposition to the following two proposals raised by the OCA for the first time in its rebuttal testimony: (1) that Columbia redo its USM study to account for capacity assigned to marketers on behalf of CHOICE customers, including capacity for standby and balancing service; and (2) that Columbia bid capacity and supply products in an AMA separately. The ALJ found that due process requires that a party be afforded a fair opportunity to respond to adverse claims, citing *Smith v. Pa. P.U.C.*, 162 A.2d 80, 83 (Pa. Super. 1960). According to the ALJ, in failing to address its proposals in its Main Brief, the OCA deprived Columbia the opportunity to address the OCA’s proposals in the Company’s Reply Brief. For this reason, the ALJ concluded that the OCA’s two proposals are procedurally inappropriate and unjust because the OCA, who had the burden of proof for these two proposals, was required but failed to address its proposals in its Main Brief. *See* 52 Pa. Code § 5.501(a)(3). The ALJ, therefore, recommended that both proposals be denied. R.D. at 67-68.

1. **Exceptions and Replies**

In its Exception No. 1, the NGS Parties argue that the ALJ erred by rejecting its proposal that USM revenue be shared equally by the customers. The NGS Parties assert that its proposal is reasonable because all customers, including CHOICE customers, pay for the assets that make it possible for Columbia to engage in transactions to maximize revenues from the otherwise under-utilized assets. The NGS Parties aver that the only assets paid for by customers that are necessary for Columbia to engage in any of the transactions described in Columbia Exhibit 16 are the capacity assets that all customers pay for on an equivalent basis through the PGDC. As such, the NGS Parties maintain that the USM revenue be returned to all customers in the same fashion through the PGDC. NGS Parties Exc. at 4.

The NGS Parties submit that even if one were to disagree and conclude that there was some component of gas supply in addition to capacity involved in some of the USM transactions, no party can contend that there is any evidence concerning the relative value that the gas component provided to the purchaser, and much less any evidence that the gas component justifies 300% more USM revenue allocation to the PGC. The NGS Parties maintain that Columbia’s purchase of NGS gas is inconsequential to whether Columbia was able to earn revenues from its capacity assets. As such, the NGS Parties assert that the only allocation methodology that is supportable is their proposal which does not discriminate, but rather shares the USM revenue equally. NGS Parties Exc. at 4‑5.

The NGS Parties aver that there are a number of factual assertions that have taken on the mantel of fact in this case when they have not been established as such. They maintain the primary and most critical assertion that is not based on fact is that Columbia’s purchase of gas for PGC customers is related to the amount of revenue Columbia is able to earn as part of any off-system sales transaction. The NGS Parties submit that this assertion is not proven in the record but appears to form the basis of the ALJ’s conclusion that their proposal fails to account for Columbia’s use of PGC gas as part of off-system sales transactions. The NGS Parties opine that even if the Company did use PGC gas to make off-system sales, there is no evidence in the record to suggest how much incremental revenue Columbia was able to achieve from its use of PGC gas. They further submit that their proposal is supported in the record as its witness testified that the value of all the so-called “off-system sales” transactions is based solely on Columbia’s ability to employ its excess capacity resources, as commodity is in abundant supply and it is capacity that is in short supply. NGS Parties Exc. at 5-6.

In reply, Columbia explains that it does not take a position with respect to the allocation of the customer’s share of USM proceeds between the PGDC and PGCC in transactions that involve both use of gas supply and capacity. Columbia is of the opinion that the choice of allocation is primarily a matter of policy for the Commission to decide. However, Columbia notes that the inherent value of an off-system sale or capacity release product in providing gas supply and/or capacity is encompassed within the negotiated value for the various products, and is determined solely by the counter-party. According to Columbia, when a transaction involves supply and capacity, it is impossible to determine how much value a third party derives from each component of the transaction. In this regard, Columbia is of the opinion that it cannot sufficiently conclude what portion of USM net proceeds result because a counter-party values the gas supply used to accomplish the transaction. For this reason, Columbia insists that the issue of the allocation of the customer share of USM net proceeds is largely one of policy choice. Columbia R. Exc. at 1, 3-5.

In its Replies to Exceptions, I&E states that it disagrees with the assertions of the NGS Parties and maintains that there is substantial record evidence in support of the ALJ’s recommendation. I&E notes that the ALJ dedicated forty-seven pages of his decision to reviewing the record evidence regarding the USM revenue sharing issue and analyzing every proposal of the various parties. According to I&E, any arguments that the ALJ’s decision was based on mere conjecture is pure folly as the facts repudiate the NGS Parties’ allegations. I&E asserts that the ALJ’s recommendation is well thought out and is based on a thorough review of the record evidence, including the USM study conducted by Columbia that was required by the Commission at Docket No. R-2014-2408268 and set forth in Columbia‘s Exhibit 16, as well as I&E’s thorough review of the USM issue and ultimate recommendation. According to I&E, the ALJ’s recommendation is just and reasonable, and is supported by the record evidence, the Public Utility Code, applicable regulations, and applicable case law. I&E R. Exc. at 3-4.

In its Replies to Exceptions, the OCA notes that the NGS Parties position would eliminate the PGCC from consideration and apply a fixed 100% allocation of all off-system sales and capacity release revenues to the demand costs through the PGDC. The OCA claims that the NGS Parties’ argument is based on a misstatement of the facts and would result in PGC customers failing to be appropriately credited for the sale of natural gas that was paid for by PGC customers. The OCA maintains that the ALJ did not ignore the evidence as alleged by the NGS Parties, rather, he reviewed the NGS Parties’ testimony and determined it was outweighed by the contrary evidence provided by the other Parties, all of whom agree that value is derived from PGC supply. The OCA asserts that the NGS Parties’ position ignores Columbia’s statements that PGC supply is a component of most USM transactions. The OCA referenced Columbia’s statement that absent a gas supply component, USM transactions other than capacity release that maximize margin revenue could not be completed, to the detriment of all firm customers. According to the OCA, the commodity assets are generated by sales customers and the revenues produced by those assets should be retained by the same subset of customers. The OCA asserts that the ALJ properly determined that there was insufficient evidence supporting the NGS Parties’ recommended modification to the USM Credit allocation. OCA R. Exc. at 2-3.

In its Replies to the NGS Parties’ Exceptions, the OSBA submits that the issue of how to allocate the ratepayer portion of the credits from Columbia’s USM is a matter best served by a reasonable compromise, which was not reflected in the NGS Parties’ proposal. The OSBA maintains that the positions taken by I&E, Columbia and the OSBA all attempt to reflect the fact that these margins are related to both the availability of capacity assets and the gas purchase activities of the Company, consider the technical problems associated with the existing mechanism and reflect the spirit of the settlement of the 2008 Section 1307(f) proceeding in the results. While the OSBA believes that its own proposal is superior to the one adopted by the ALJ, it also believes that the ALJ’s recommendation is consistent with its argument that the proposal offered by Columbia and I&E are not outside the range of reasonableness. OSBA R. Exc. at 2-3.

The OSBA asserts that the NGS Parties’ position that all of the USM credits should be assigned to the PGDC ignores the evidence of record submitted by the OSBA’s witness wherein he testified that the NGS Parties’ proposal fails to recognize all of the inter-related effects which allow Columbia to earn the margins. The OSBA notes that while it is true that all or virtually all of the transactions in the USM make use of capacity assets which are generally paid for by both sales and Choice customers, it must also be recognized that Columbia is able to earn these margins as a result of its activities on behalf of PGC sales customers because it is active in the natural gas markets, and that as shopping increases, the absolute level of the margins is likely to decline. According to the OSBA, the extreme position taken by the NGS Parties ignores Columbia’s gas purchase activities in the market in a one-sided approach to allocation which results only in benefits to the NGS Parties. The OSBA opines that the ALJ correctly rejected the NGS Parties’ proposal. OSBA R. Exc. at 3-4.

In its Exception No. 2, the NGS Parties state that the USM mechanism approved by the ALJ is unreasonable and fails to correct the same issues that are inherent in the current USM. The NGS Parties note that the ALJ started out in the correct direction by finding that the current 60/40 percent sharing mechanism is not reasonable, but then mistakenly agreed with the premise that PGC gas is a necessary component of off-system sales. According to the NGS Parties, the flaw in the ALJ’s approval of the I&E recommended adjustment mechanism is that it in no way alters the current disparity in the amount of USM revenues being allocated between PGC and CHOICE customers, but rather effectively maintains the USM allocation at current levels of sharing, at levels that the ALJ has already deemed to be unreasonable. NGS Parties Exc. at 7.

The NGS Parties aver that while the sharing mechanism adopted by the ALJ may have modified the USM Mechanism to ensure the allocation of revenues to the PGC does not increase as shopping increases, the ALJ’s recommended mechanism actually does the opposite. According to the NGS Parties, as shopping declines, a higher percentage of USM revenues would be allocated to the PGC. The NGS Parties opine that this methodology would actually have the potential to worsen the inequity of the USM revenue allocated between PGC customers and CHOICE customers. In this regard, the NGS Parties argue that the ALJ’s recommendation fixes one problem just to create another problem. Furthermore, the NGS Parties assert that there is no evidence in the record that shows in any meaningful way that increased shopping levels have anything to do with Columbia’s ability to make off-system sales. NGS Parties Exc. at 7-8.

Next, the NGS Parties assert that there is no factual basis to conclude that Columbia will need to retain fewer capacity assets if shopping increases. According to the NGS Parties, while it may be true that Columbia would need to purchase fewer gas supplies, there is no evidence in this record as to how much such supplies are a part of or valued by off-system sales transactions. As such, they assert that there is no basis to conclude that an increase in shopping will increase or decrease capacity release or off-system sales revenue. The NGS Parties opine that there is no evidence, other than unsupported conclusions, that changes in shopping levels correlate with USM revenue. However, the NGS Parties state that there is evidence showing that increases in shopping increase the disparity caused by the current shopping mechanism. They explain that the reason for this is that as the denominator of the equation by which the PGCC share of revenue is allocated shrinks as more customers shop and no longer pay the PGCC, the amount of revenue allocated per customer increases. NGS Parties Exc. at 8.

Finally, the NGS Parties state that the USM mechanism recommended in this proceeding fails to recognize that the current allocation levels are unjust and unreasonable and only adjusts the allocation percentages if shopping levels change. The NGS Parties aver that this latter problem is worsened by the fact that the current disparate credit mechanism actually discourages customers from shopping by creating the illusion that PGC gas is less expensive than it really is because of the subsidy being provided by CHOICE customers to default service customers. By imposing the adjustment mechanism, the NGS Parties assert that the ALJ simply enshrines the current flawed methodology with the hope that someday if more customers shop, in spite of the economic incentives to not do so, perhaps the allocation will change. The NGS Parties maintain that the adjustment mechanism does not solve the flawed allocation percentages that appear to have led the ALJ to reject the current USM. The NGS Parties continue to assert that 100 percent of the USM revenue should be allocated to all customers through the PGDC, but if the Commission were to impose any adjustment mechanism, it must first adjust the percentages to some fact-based levels, not today’s conjectured and unsupported numbers. NGS Parties Exc. at 8-9.

In its Replies to the NGS Parties’ Exceptions, Columbia reiterates its opinion that in transactions that involve both use of gas supply and capacity, it does not take a position with respect to the allocation of the customer’s share of USM proceeds between the PGDC and PGCC. Columbia restates its belief that the choice of allocation is primarily a matter of policy choice for the Commission to decide. Columbia R. Exc. at 1, 3-5.

In its Replies to Exceptions, I&E refutes the NGS Parties’ position and avers that the evidence presented by Columbia and itself demonstrates that the USM methodology recommended by the ALJ will result in percentages that will rise or fall with the level of choice/shopping participation. According to I&E, the NGS Parties’ Exceptions continue to misrepresent the recommendation as stated in the ALJ’s decision as the allocation of the USM revenue is based on the establishment of an appropriate mechanism and subsequent allocation percentages will be fluid. I&E claims that the NGS Parties’ argument that the allocation percentages are fixed is incorrect and should be rejected. According to I&E, the ALJ’s recommendation is just and reasonable, is supported by record evidence and should be adopted. I&E R. Exc. at 4-6.

In its Replies to the NGS Parties’ Exceptions, the OCA states that at current CHOICE participation levels, the alternative USM allocation recommended by the ALJ results in a 60/40 percent sharing between the PGCC and PGDC, which is the same sharing currently in place. The OCA explains that the ALJ’s findings do not relate to the specific level of sharing but to how the allocation changes in response to CHOICE participation. The OCA opines that the NGS Parties are not correct that the ALJ deemed a 60/40 percent sharing to be unreasonable. The OCA states that it is a fact that PGC customers pay both commodity and demand charges through the PGC and that CHOICE customers pay the demand charge only. The OCA notes that for the last nineteen years, during which Columbia has had sharing mechanisms for marketed capacity release credits and off-system sales transactions, there has been recognition of the link between off-system sales and commodity costs and that the NGS Parties now propose to ignore the commodity component of off-system sales. According to the OCA, if the Commission were to accept their proposal, CHOICE customers would benefit from off-system sales transactions from supply obtained by their supplier and benefit from off-system sales transactions from supply obtained by Columbia, although they do not pay for supply obtained by Columbia. The OCA avers that such a result would be arbitrary and unfair. The OCA asserts that the allocation approved in this proceeding should recognize the commodity component of off-system sales transactions and the need for distinction in the allocation of USM Credits between CHOICE and PGC customers. OCA R. Exc. at 4-5.

In response to the NGS Parties’ subsidy argument, the OCA claims that the NGS Parties’ position is flawed in that it treats the existence of any price difference as a subsidy. The OCA asserts that price differences do not constitute a subsidy where there are corresponding cost differences. According to the OCA, to the extent that revenues are generated by different assets, which are paid for by different customers, which results in a difference in USM Credits for PGC and Choice customers, the difference is justified by difference in costs. The OCA opines that contrary to the NGS Parties’ allegation, the evidence unquestionably supports crediting the PGC with the majority of off-system sales credits because PGC supply drives most off-system sales transactions and the evidence shows that the Company has historically maximized its revenue by choosing transactions with a gas supply component. As such, given that the value of sales customers’ contributions is greater than Choice customers, the OCA takes the position that the current 60/40 percent allocation is both reasonable and fair and should be approved. OCA R. Exc. at 5-6.

In its Replies to the NGS Parties’ Exceptions, the OSBA states that it has argued that this issue is a matter best served by a reasonable compromise, rather than the extreme position as taken by the NGS Parties. According to the OSBA, the positions taken by I&E, Columbia and itself all make an attempt at a compromise that reflects the fact that the margins in question are related to both the availability of capacity assets and the gas purchase activities of the Company, reflects the technical problems associated with the existing mechanism and reflects the spirit of the settlement of the 2008 Section 1307(f) proceeding in the results. The OSBA submits that the ALJ’s recommendation of I&E’s proposal does reflect a reasonable compromise, and even though the ALJ did not choose to recommend the OSBA’s proposal, the ALJ has pointed the Commission in the right direction. The OSBA opines that the ALJ recommended USM adjustment mechanism reflects the totality of the activities engaged in by Columbia and not just the interests of a single party. OSBA R. Exc. at 4.

1. **Disposition**

Based upon our review of the evidence of record, we agree with the ALJ’s first conclusion that the existing 60/40 percent allocation between the PGCC and the PGDC is not reasonable in light of the USM study conducted by Columbia. However, we do not agree with the ALJ’s recommendation that the proposed USM sharing mechanism proposed by I&E should be approved. Instead, we are persuaded by the arguments put forth by the NGS Parties in this proceeding that the most just and reasonable method to allocate the revenues under scrutiny is through a 100 percent allocation to the PGDC so that all customers, both PGC and CHOICE customers, share these revenues equally. We find that the NGS proposal is not only the most equitable means to distribute USM revenue, but also the simplest and least arbitrary. We are convinced by the NGS Parties position that each of the five types of transactions utilized to secure USM revenues by Columbia are mostly dependent upon the transportation and storage assets that are paid for on an equivalent basis by all customers. We find that the capacity assets are the most critical component that Columbia utilizes to secure USM revenue.

Also, as argued by the NGS Parties, we find that their proposal is the most reasonable one on the record because all customers pay the same amount for the use of the capacity assets that make it possible for Columbia to engage in the various transactions to maximize revenues that is distributed through the USM mechanism. For this reason, it is only fair that the USM revenue be returned to all customers through the rate that recovers the cost of pipeline and storage capacity – the PGDC rate. We further agree with the NGS Parties that in today’s natural gas commodity market, the scarce resource is the ability to store and transport natural gas, not the natural gas itself. Providing sixty percent of the USM revenues though the PGCC to only PGC customers is no longer supportable nor reasonable in the natural gas market that exists at this time. Furthermore, we are persuaded by the argument of the NGS Parties that the natural gas they deliver into Columbia’s system is co-mingled with any gas that may be used for PGC customers. As such, the natural gas Columbia may utilize to conduct the wholesale transactions cannot with certainty be said to be solely PGC gas.

In finding that the USM proposal of the NGS Parties to be the most reasonable, we shall also reject the position of the other Parties that the percentage allocation between the PGCC and the PGDC should somehow be based upon the level of shopping in Columbia’s service territory. We are not convinced that the overall percentage of USM revenue distributed between PGC and CHOICE customers should change based on the level of shopping. While we agree that the technical flaw identified by Columbia in the current 60/40 percent allocation mechanism would result in CHOICE customers receiving a smaller per Dth credit as shopping increases, we do not believe that the I&E recommendation is the best way to resolve that problem. As argued by the NGS Parties, the alternative approaches fail to significantly alter the amount of revenue allocated to the PGDC and fail to realize that the level of shopping has anything to do with the disparity in the existing USM revenue allocation. Instead, we conclude that the proposal of the NGS Parties is the most reasonable proposal on the record to correct the currently existing inequities.

Accordingly, we shall grant the Exceptions of the NGS Parties on this issue and reject the recommendation of the ALJ.

1. **Retained Pipeline Capacity Study**
2. **Position of the Parties**

The NGS Parties asserted that Columbia should be required to perform a study to determine if a more refined capacity recovery mechanism is warranted. The NGS Parties explained that per Columbia Exhibit 16, the USM Study presented in this proceeding by the Company, the total cost of capacity Columbia retains is split between CHOICE and PGC customers and recovered through the PGDC. According to the NGS Parties, while CHOICE suppliers pay directly for pipeline costs for the capacity assigned to them, the cost of pipeline capacity Columbia uses to meet PGC year round delivery needs is being recovered through the PGDC which is paid for by both CHOICE and PGC customers. NGS Parties M.B. at 18.

The NGS Parties asserted that, while NGSs are paying the costs of the pipeline assets to make baseload deliveries for CHOICE customers, Columbia does not assign the costs of the slice of assets used solely to make baseload deliveries to default service customers to the PGCC so they are paid for on the same basis as CHOICE customers. The NGS Parties contended that it appears that both CHOICE customers and PGC customers are paying the costs for the pipeline assets to make year round deliveries for PGC customers through the PGDC. The NGS Parties further contended that CHOICE customers are paying for the cost of pipeline assets that are being utilized to serve the PGC year round delivery needs. The NGS Parties opined that this is an inequitable cost allocation and that PGC customers should be paying for the cost of pipeline assets that Columbia utilizes to bring their gas into the system, and CHOICE customers should not be required to contribute to paying those costs. NGS Parties M.B. at 18-19.

However, the NGS Parties stated that this is not to suggest that all of the costs of the capacity assets be paid for by PGC customers. According to the NGS Parties, it is reasonable for CHOICE customers to share in some of the costs of the capacity assets. For example, the NGS Parties explained that the storage assets Columbia retains should be shared by all customers equally as storage is used to balance the system and otherwise maintain reliability on colder-than-normal days. Therefore, the NGS Parties conceded that it is appropriate for CHOICE customers to share in those costs. Furthermore, the NGS Parties stated that the peaking pipeline assets Columbia retains should also be paid for by CHOICE and PGC customers equally as peaking pipeline assets are needed to maintain reliability on the system. However, the NGS Parties opined that any pipeline assets Columbia is utilizing to make daily deliveries for PGC customers should be paid for by PGC customers only and should not be recovered through the PGDC. NGS Parties M.B. at 19.

The NGS Parties requested that, in order to gather sufficient evidence to determine the scope and scale of this issue, the Commission should require that Columbia:

[S]ubmit in its next 1307(F) proceeding an analysis on how the pipeline capacity it retains is being utilized. In the analysis Columbia should be required to calculate A) the portion of the pipeline assets it retains that is being utilized for system peaking needs and B) the portion of the pipeline assets it retains that it utilizes for PGC delivery needs. Once the portion of pipeline assets used to serve only the PGC deliveries is identified, in the next 1307(F) proceeding the Commission should then require that those pipeline costs be allocated to the PGCC.

(NGS St. No. 1 at 17); NGS Parties M.B. at 19.

According to the NGS Parties, there should no longer be a subsidy in the way the PGDC is calculated or in the way USM revenue is returned to customers. The NGS Parties opined that it appears that CHOICE customers are contributing toward some portion of the costs of those assets that are used to provide year-round baseload delivery to PGC customers. The NGS Parties further opined that the requested study will show the magnitude of the issue and aid the Commission in deciding whether and what kind of fix is needed. NGS Parties M.B. at 19-20.

In reply, Columbia stated that the analysis proposed by the NGS Parties would require Columbia to calculate: (1) the portion of pipeline assets retained for system peaking needs; and (2) the portion of pipeline assets utilized for PGC delivery needs. Columbia noted that the stated purpose of this proposed study is to identify pipeline capacity costs to “be allocated to the PGCC”. According to Columbia, the effect could be to charge sales and CHOICE customers different capacity costs. Columbia M.B. at 13-14.

Columbia contended that the NGS Parties’ proposal is unnecessary as it is improper to charge PGC and CHOICE customers different amounts for pipeline capacity that is reserved to meet the service requirements of all firm customers, PGC and CHOICE. Columbia further asserted that not only is the requested allocation study unnecessary as all firm sales and CHOICE customers properly pay the same cost for pipeline capacity, it is also impossible to conduct such a study because there is no way for Columbia to determine which capacity is used to physically serve CHOICE versus PGC customers. Columbia argued that the NGS Parties’ proposal should be denied. Columbia M.B. at 14.

Next, Columbia explained that under its average day CHOICE program, each CHOICE NGS must deliver every day of the year an amount of gas equal to 1/365th of the NGS customer group’s annual normalized consumption. In accordance with the provisions of Section 2204(d) of the Public Utility Code, 66 Pa.C.S. § 2204(d), and Columbia’s approved restructuring, Columbia stated that it assigns Columbia Gas Transmission (TCO) firm transportation (FT) capacity to NGSs and, if the NGS elects, upstream Columbia Gulf (Gulf) FT capacity to meet the average day requirements of CHOICE customers. According to Columbia, because average day deliveries would be inadequate to meet peak day needs and may be either more or less than the daily requirements of a CHOICE NGS’s customers, Columbia manages daily imbalances and meets peak needs through retained FT capacity and storage. Columbia M.B. at 15.

Columbia noted that the NGS Parties opined that CHOICE customers are paying for assets that are being utilized to serve the delivery needs of sales customers. According to Columbia, the NGS Parties appear to believe that certain capacity held by Columbia can be delineated as used to serve CHOICE customers while other capacity is used to meet the needs of PGC customers. Columbia argued that such a contention is erroneous from an operational perspective. Columbia explained that it does not reserve certain capacity to meet the design day needs of only PGC customers, nor does it reserve certain capacity to meet the design day needs of only CHOICE customers. Columbia stated that it contracts for pipeline capacity to meet its obligation to serve the total design day needs of its firm PGC and CHOICE customers. According to Columbia, the Company makes no distinction between sales or CHOICE service in acquiring capacity, as Columbia has the Supplier of Last Resort responsibility to hold sufficient capacity to serve these customers without regard to whether they select PGC or CHOICE service. *See* 66 Pa. C.S. § 2207(a). Columbia asserted that all of the capacity contracted for by the Company is needed to serve the peak demand requirements of both PGC and CHOICE customers across Columbia’s system. Columbia M.B. at 17.

In conclusion, Columbia maintained that it is proper that all CHOICE and sales customers pay the same per unit rate of demand costs. According to Columbia, an analysis of the use of the Company’s retained pipeline capacity would reveal no additional information that the Parties do not currently have at their disposal because all of Columbia’s pipeline capacity is used to meet its obligation of providing firm service to CHOICE and PGC customers and to ensure reliability. As such, Columbia opined that the NGS Parties’ request for a study concerning cost recovery of pipeline assets to serve the PGC should be denied. Columbia M.B. at 23-24.

1. **ALJ’s Recommendation**

In his Recommended Decision, the ALJ concluded that the study requested by the NGS Parties was unreasonable and unnecessary. The ALJ stated that he agreed with Columbia’s position that the requested study is impossible to conduct because the Company cannot identify capacity used to serve sales customers versus capacity used to serve CHOICE customers. According to the ALJ, since all of Columbia’s retained capacity is used to serve the design day needs of both CHOICE and sales customers, there is no way to distinguish between the cost of capacity used to serve either sales or CHOICE customers. The ALJ concluded that for this primary reason and for the other reasons set forth by Columbia in its Main Brief and Reply Brief, it is proper that all CHOICE and sales customers pay the same per unit rate of demand costs. R.D. at 83.

The ALJ next found that an analysis of the use of Columbia’s retained pipeline capacity would reveal no additional information that the Parties do not currently have at their disposal because Columbia already has explained that all of its pipeline capacity is used to meet its obligation of providing firm service to CHOICE and PGC sales customers and to ensure system reliability. Accordingly, the ALJ found that the NGS Parties have failed to meet their burden of proof with respect to the study proposal. Therefore, the ALJ recommended that the NGS Parties’ proposal for a study should be denied. R.D. at 83.

1. **Exceptions and Replies**

In its Exception No. 3, the NGS Parties state that its witness reviewed Columbia’s filing and concluded that it appears that CHOICE customers are subsidizing default service customers. The NGS Parties reason that if all the costs of all the capacity assets were thrown into the PGDC bucket, including the costs of the pipeline assets assigned to NGSs, then a single unified PGDC would be fair, as all customers would be paying the average per unit costs of that bundle of assets. However, the PGS Parties assert that is not what is happening as Columbia extracts the costs of the pipeline capacity assigned to NGSs for their required daily deliveries of 1/365 of annual customer usage, and charges that to the NGSs. In other words, the NGS Parties claim those costs are taken out of the bucket before the average per unit cost is calculated. The NGS Parties opine that what this means is that NGS customers pay separately for the pipeline capacity that is used to serve them, but then are required to pay a PGDC that includes all the costs of the baseload capacity used to supply PGC customers, who make up 2/3 of Columbia’s customers. The NGS Parties state that they object to the inclusion of pipeline assets used to make PGC daily deliveries because they clearly are not used to deliver gas to NGS customers. NGS Parties Exc. at 9-11.

The NGS Parties submit that neither Columbia’s misdirection in this proceeding nor the ALJ’s apparent belief that Columbia does not know what capacity assets it uses to serve its customers, changes the obvious – that CHOICE customers appear to be subsidizing default service customers. According to the NGS Parties, Columbia’s protests simply cannot be allowed as a reason to excuse it from providing the analysis that either confirms this fact, so that it can be corrected, or disproves that which appears to be otherwise obvious. Therefore, the NGS Parties except to the ALJ’s acceptance of Columbia’s diversionary tactics, and request that Columbia be required to perform the requested study. NGS Parties Exc. at 11.

In its Replies to the NGS Parties’ Exceptions, Columbia describes the NGS Parties’ characterization of how Columbia calculates the demand charge as wholly inaccurate and contrary to the record evidence presented by the Company in this proceeding. Columbia asserts that the NGS Parties mischaracterization of the PGDC formula, presented for the first time in this Exception, is not a basis for overturning the ALJ’s recommendation. Columbia explains that, consistent with record evidence in this proceeding, it calculates the PGDC for sales and CHOICE customers in the following manner:

 Columbia’s CHOICE program is structured so that CHOICE and PGC sales customers pay the same amount for capacity costs. (Columbia St. No. 2-R, p. 11). Columbia accomplishes this in two steps. First, Columbia determines the PGDC rate by dividing total demand costs by the sum of sales and CHOICE throughput. (Columbia Ex. 1-E). PGC sales customers pay that demand rate. (*Id.*). CHOICE customers pay that demand rate net of a Capacity Assignment Factor credit for the cost of capacity assigned to NGSs to meet their average day delivery requirements. (Columbia St. No. 2-R, p.12). Thus, the PGDC rate paid by CHOICE customers is approximately 3.5 cents per therm (35 cents/Dth) less than the PGDC rate charged to PGC sales customers. (*Id.*). The NGSs pay for the cost of their assigned capacity and, presumably, pass the cost to CHOICE customers through rates. (*Id.*). Therefore, both CHOICE and PGC sales customers effectively pay the same per unit demand charge.

(Columbia M.B. at 16; see also Columbia Ex. 1-A, Sch. 3, Sheet 1.) Columbia R. Exc. at 5-6.

 Columbia notes that in addition, its PTC takes into account the Capacity Assignment Factor credit, thereby ensuring that an “apples to apples” comparison between sales and CHOICE costs is given to customers. Columbia avers that the NGS Parties offered no evidence on the record to challenge the formula Columbia uses to calculate the PGDC. Instead, Columbia asserts that the NGS Parties now allege for the first time in Exceptions that the reason for the alleged inequity is the way Columbia calculates the PGDC. According to Columbia, the NGS Parties misstate how Columbia calculates its demand charge and the formula they describe in their Exception No. 3 is mathematically flawed. Columbia asserts that rather than removing the cost of capacity assigned to NGSs for their average day deliveries before the average per unit demand cost is calculated, it is clear that the Company does just the opposite. Columbia maintains that it determines the PGDC rate by dividing total demand costs by the sum of sales and CHOICE throughput and charges this amount to sales customers. Columbia states that it then deducts from the CHOICE PGDC rate the per therm cost of capacity assigned to CHOICE NGSs for their average day deliveries. Columbia opines that this calculation results in CHOICE and sales customers effectively paying the same demand rate. Columbia R. Exc. at 6-7.

 Columbia argues that charging PGC sales and CHOICE customers the same cost of capacity is proper from an operational standpoint. According to Columbia, charging sales and CHOICE customers different capacity costs is operationally unfounded because Columbia uses all of its retained capacity to fulfill its responsibility of serving both PGC and CHOICE customers under both design day and actual day conditions. Additionally, Columbia notes that it uses its retained capacity to physically serve CHOICE customers who are located outside the distribution markets where NGSs schedule deliveries. Columbia R. Exc. at 8.

 Columbia submits that ratemaking principles also support CHOICE and sales customers paying the same cost of capacity as the streaming of demand charges presents a number of practical problems. Columbia asserts that there is an inability to define the cost of capacity used to serve customers in an area fed by multiple pipelines and there exists difficulty distinguishing between FT capacity used to deliver supplies to serve sales customers daily needs from FT capacity used to facilitate storage. Columbia further asserts that significant customer confusion could result from the possibility that customers in nearby, but physically separate, market areas could be charged different amounts for the same usage. Columbia R. Exc. at 8.

 Finally, Columbia maintains that the requested study would be impossible to conduct because there is no way to distinguish between the cost of capacity physically used to serve either sales or CHOICE customers since all of Columbia’s retained capacity is used to serve the design day needs of both CHOICE and sales customers. Columbia opines that the NGS Parties’ argument ignores the many additional operational and ratemaking reasons why the requested study should be rejected. According to Columbia, the ALJ correctly rejected the NGS Parties’ request for a study as such study is unreasonable and unnecessary because no subsidy between PGC and sales customers can exist when both PGC and sales customers pay the same average cost of capacity. Columbia R. Exc. at 9.

 In its Replies to Exceptions, I&E asserts that the argument that there is the “appearance” of a subsidy is the self-serving position of the NGS Parties and is not supported by the record evidence. I&E opines that this argument is unpersuasive as the ALJ correctly concluded that the study requested by the NGS Parties is unreasonable and unnecessary. Furthermore, I&E maintains that the ALJ properly concluded that an analysis of the use of Columbia’s retained pipeline capacity would reveal no additional information that the Parties do not currently have at their disposal because the Company already has explained that all of its pipeline capacity is used to meet its obligation of providing firm service to CHOICE and PGC sales customers and to ensure reliability. I&E R. Exc. at 6-7.

1. **Disposition**

Upon our review of the evidence of record, we are in agreement with the ALJ’s recommendation that the requested study is unnecessary and unreasonable. We are persuaded by Columbia’s explanation that it contracts for pipeline capacity to meet its obligation to serve the total design day demand of both its firm PGC and CHOICE customers. We are further convinced by the position taken by Columbia that there is no way for the Company to determine which capacity is utilized to serve PGC customers versus the pipeline capacity utilized to serve CHOICE customer. Columbia has demonstrated on the record that it does not reserve certain capacity to meet the design day needs of only PGC customers; nor does it reserve certain capacity to meet the design day needs of only CHOICE customers. As such, Columbia properly charges all CHOICE and PGC customers the same per unit rate for demand costs. We find that the study requested by the NGS Parties is unnecessary as it would be improper to charger PGC customers and CHOICE customers different amounts for pipeline capacity that is reserved to meet the service requirements of all firm customers. Accordingly, we shall deny the NGS Parties’ Exceptions that would require Columbia to perform an additional study concerning cost recovery of its pipeline assets.

# Conclusion

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed settlement. Based on our review of the record in this case, including the Joint Petition and the Statements in Support thereof, we find that the proposed Partial Settlement between Columbia, I&E, the OCA and the OSBA is in the public interest and merits approval. In particular, we find that Columbia is pursuing a least cost fuel procurement policy pursuant to 66 Pa. C.S. §§ 1318(a)(1)‑(4) and (b)(1)‑(3). Accordingly, we shall adopt the Recommended Decision, as modified, consistent with this Opinion and Order, and approve the Joint Petition. Additionally, we shall grant, in part, and deny, in part, the Exceptions of the NGS Parties, and dismiss the Complaints filed by the OCA and the OSBA; **THEREFORE:**

**IT IS ORDERED:**

1. That the Exceptions filed by the NGS Parties to the Recommended Decision of Administrative Law Judge Mark A. Hoyer are granted, in part, and denied, in part.
2. That the Recommended Decision of Administrative Law Judge Mark A. Hoyer, issued on August 7, 2015, is adopted as modified by this Opinion and Order.
3. That the Joint Petition for Partial Settlement that Columbia Gas of Pennsylvania, Inc., the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate have executed and filed at Docket No. R-2015-2469665, is granted.
4. That Columbia Gas of Pennsylvania, Inc. is pursuing a least cost fuel procurement policy pursuant to 66 Pa. C.S. §§ 1318(a)(1)-(4) and (b)(1)-(3).
5. That the NGS Parties’ proposal to require Columbia Gas of Pennsylvania, Inc. to undertake a study of the use of purchased gas cost assets is denied.
6. That the Formal Complaints of the Office of Small Business Advocate at Docket No. C-2015-2475969 and the Office of Consumer Advocate at Docket No. C-2015-2474515, be dismissed.
7. That Columbia Gas of Pennsylvania, Inc., the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate, the Columbia Industrial Interveners and the NGS Parties be ordered to comply with the terms and conditions of the Joint Petition for Partial Settlement executed and submitted in this proceeding as though each term and condition stated therein had been the subject of an individual ordering paragraph.
8. That Columbia Gas of Pennsylvania, Inc. be permitted to file a tariff supplement, on at least one day’s notice to the Commission, containing changes in rates to provide for the recovery of its costs of purchased gas, consistent with the terms and conditions of the Joint Petition for Partial Settlement; that incorporates the Unified Sharing Mechanism proposal of the NGS Parties in this proceeding.
9. That upon the filing of a tariff supplement by Columbia Gas of Pennsylvania, Inc., acceptable to the Commission as conforming with this Order and the Joint Petition for Partial Settlement, and the Commission’s approval thereof, the purchased gas cost rates established therein become effective for service rendered on and after October 1, 2015.
10. That upon acceptance and approval by the Commission of the tariff supplement and supporting data filed by Columbia Gas of Pennsylvania, Inc., as being consistent with this Order and the Joint Petition for Partial Settlement, the inquiry and investigation at Docket No. R-2015-2469665 shall be terminated and the docket marked closed; and that the dockets be marked closed at Docket No. C-2015-2475969 and Docket No. C-2015-2474515.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 17, 2015

ORDER ENTERED: September 30, 2015

1. The Columbia Industrial Interveners (CII) (comprised of Glen-Gery Corporation and Knouse Foods Cooperative, Inc.), Dominion Retail, Inc., Shipley Energy Company, and Interstate Gas Supply, Inc. (collectively, the NGS Parties) have indicated that they do not oppose the Partial Settlement. [↑](#footnote-ref-1)
2. As noted, CII includes Glen-Gery Corporation and Knouse Foods Cooperative, Inc. [↑](#footnote-ref-2)
3. CHOICE customers are those customers of Columbia that purchase their gas supply requirements from an alternative natural gas supplier pursuant to Columbia’s CHOICE program. [↑](#footnote-ref-3)